

BEFORE THE BOARD OF SOCIAL WORK EXAMINERS
AND PROFESSIONAL COUNSELORS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed)
adoption of New Rule I, an)
ethics code)

NOTICE OF PUBLIC HEARING
ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On August 21, 2003, at 10:00 a.m., a public hearing will be held in room 471, 301 South Park Avenue, Helena, Montana, to consider the proposed adoption of New Rule I.

2. The Department of Labor and Industry (Department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Social Work Examiners and Professional Counselors (Board) no later than 5:00 p.m., on August 14, 2003, to advise us of the nature of the accommodation needed. Please contact Mary Hainlin, Board of Social Work Examiners and Professional Counselors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2369; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsdsdp@state.mt.us.

3. The rule proposed to be adopted provides as follows:

NEW RULE I CODE OF ETHICS - LICENSED PROFESSIONAL COUNSELORS AND LICENSED CLINICAL SOCIAL WORKERS (1) Pursuant to 37-22-201 and 37-23-103, MCA, the board hereby adopts the following professional and ethical standards for licensed professional counselors and licensed social workers to ensure the ethical, qualified, and professional practice of social work and professional counseling for the protection of the general public. These standards supplement current applicable statutes and rules of the board. A violation of the following is considered unprofessional conduct as set forth elsewhere in rule and may subject the licensee to such penalties and sanctions provided in 37-1-136, MCA.

(2) A licensed professional counselor or licensed social worker shall abide by the following code of professional ethics.

(a) Licensees shall not:

(i) commit fraud or misrepresent services performed;

(ii) divide a fee or accept or give anything of value for receiving or making a referral;

(iii) violate a position of trust by knowingly committing any act detrimental to a client;

(iv) exploit in any manner the professional relationships with clients or former clients, supervisees, supervisors, students, employees, or research participants;

(v) engage in or solicit sexual relations with a client,

or commit an act of sexual misconduct or a sexual offense if such act, offense or solicitation is substantially related to the qualifications, functions, or duties of the licensee;

(vi) condone or engage in sexual harassment. Sexual harassment is defined as deliberate or refuted comments, gestures, or physical contact of a sexual nature that are unwelcome by the recipient;

(vii) discriminate in the provision of services on the basis of race, creed, religion, color, sex, physical or mental disability, age or national origin;

(viii) provide professional services while under the influence of alcohol or other mind altering or mood altering drugs which impair delivery of services; or

(ix) engage in any advertising which is in any way fraudulent, false, deceptive, or misleading.

(b) All licensees shall:

(i) provide clients with accurate and complete information regarding the extent and nature of the services available to them;

(ii) terminate services and professional relationships with clients when such services and relationships are no longer required or where a conflict of interest exists;

(iii) make every effort to keep scheduled appointments;

(iv) notify clients promptly and seek the transfer, referral, or continuation of services pursuant to the client's needs and preferences if termination or interruption of services is anticipated;

(v) attempt to make appropriate referrals pursuant to the client's needs;

(vi) obtain informed written consent of the client or the client's legal guardian prior to the client's involvement in any research project of the licensee that might identify the client or place them at risk;

(vii) obtain informed written consent of the client or the client's legal guardian prior to taping, recording, or permitting third party observation of the client's activities that might identify the client or place them at risk;

(viii) safeguard information provided by clients. Except where required by law or court order, a licensee shall obtain the client's informed written consent prior to releasing confidential information; and

(ix) disclose to and obtain written acknowledgement from the client or prospective client as to the fee to be charged for professional services and/or the basis upon which the fee will be calculated.

AUTH: 37-22-201, 37-23-103, MCA

IMP: 37-22-101, 37-22-201, 37-23-101, 37-23-103, MCA

REASON: The Board has determined there is reasonable necessity to adopt this new rule to comply with recommendations of a legislative audit. Pursuant to statutory obligations in 37-22-201 and 37-23-103, MCA, the Board is required to adopt rules setting forth professional and ethical standards. The proposed

professional and ethical standards are based upon national standards of ethical behavior for licensed professional counselors and social workers. The statutes require the Board to establish professional ethics for people seeking to practice in licensed professional counseling and social work. This new rule will affect all licensees.

4. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be mailed to the Board of Social Work Examiners and Professional Counselors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to (406) 841-2309, or e-mailed to dlibsdswp@state.mt.us and must be received no later than 5:00 p.m., August 29, 2003.

5. An electronic copy of the Notice of Public Hearing is available through the Department's site on the World Wide Web at <http://discoveringmontana.com/dli/swp>, in the Board's rule notice section. The Department strives to make the electronic copy of the Notice conform to the official version of the Notice printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

6. Darcee Moe, attorney, has been designated to preside over and conduct this hearing.

7. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wants to receive notices regarding all Board of Social Work Examiners and Professional Counselors administrative rulemaking proceedings or other administrative proceedings. Such written requests may be mailed or delivered to the Board of Social Work Examiners and Professional Counselors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to (406) 841-2309, e-mailed to dlibsdswp@state.mt.us, or may be made by completing a request form at any rules hearing held by the Department.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

9. The Board will meet to consider the comments made by the public, the proposed responses to the comments, and take final

action on the proposed adoption at the next regularly scheduled meeting on September 19, 2003, in Missoula, Montana. Members of the public are welcome to attend the meeting and listen to the Board's deliberations.

BOARD OF SOCIAL WORK EXAMINERS
AND PROFESSIONAL COUNSELORS
MARY MEIS, ACTING CHAIR

/s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State July 21, 2003